IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.2709 OF 2006

Between:

K.Israel, S/o.K.Abraham.

..... PETITIONER

AND

The Government of Andhra Pradesh,
Rep. by its Principal Secretary (Home),
Secretariat, Hyderabad, and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.2709 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> "… Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Habeus Corpus directing the respondents to produce the detenue by name K.Michael John S/o.K.Israel, now aged about 14 years, R/o.H.No.1-6-222/A, Ramnagar, Hyderabad, before this Honourable Court and set him at liberty and to pass such other …"

2. The petitioner married one Smt.K.Viola, the daughter of 5th respondent herein in the year 1990. Out of the wed-lock, a boy child was borne by name K.Michael John on 21.03.1993. It appears that subsequently there were differences between the petitioner and his wife, and therefore, they started living separately, which eventually led to filing of O.P.No.71 of 2000 on the file of Family Court, Secunderabad, by the petitioner claiming the custody of the minor child. It appears that the Family Court, Secunderabad, by an order dated 03.03.2000 granted custody of the minor child to the petitioner. It is asserted in the affidavit filed in support of the writ petition that on 16.07.2001 when the child

(then aged about nine years) was dropped at the School (St.Patriks High School, Secunderabad, and in the normal course in the evening at about 3.45 p.m. when the auto-rickshaw driver went to pick up the child from the School as per the arrangement made by the petitioner, the child was not found. On the same day, it appears that the petitioner lodged a complaint with the Police, which came to be registered as Crime No.169 of 2001 on the file of Gopalapuram Police Station, Secunderabad. Hence, this writ petition after a lapse of five years complaining that the Police have not taken any action on the abovementioned crime. The petitioner also made certain allegations against the 5th respondent, the details of which may not be necessary for the present purpose.

3. Notice before admission was ordered on 15.02.2006. On behalf of Respondents 1 to 4, counter-affidavit is filed by the Respondent No.4. The relevant portion of the counter-affidavit reads as follows:

> "5. While the matter stood thus it is submitted that on 26.7.2001, the petitioner informed the investigating officer that Mrs.Viola (mother of the missing boy) visited the School on 16.7.2001 wearing burqa and took her son from the school. Various efforts have been made by us whether Mrs.Viola and her son left from any of the international Airports in India. Finally a letter was addressed on 13-9-2001 to the Consulate General, Kuwait Embassy in India at Mumbai requesting him to verify the whereabouts of Mrs.Viola and her son Michael John Isreal and furnish the information to the Police, to enable them to take necessary action in the matter. On 31-10-2001, a Fax letter was received from Mrs.Viola from Emirates of Abu Dhabi, UAE admitting that she had taken her son and he is staying with her happily. She requested the Police to drop further investigation. The letter was

> cross-checked and verified. She sent the letter duly attested by Attache (Consular) Embassy of India, Abu Dhabi vide Endt.No.11.913.01, dated 1.11.2001 in which she affixed a joint photographer of herself along with her son. She requested the police to drop further action in the matter. The then Inspector of Police of Gopalapuram Police Station submitted a detailed report on 17.7.2002 to the Asst. Commissioner of Police, Gopalapuram seeking permission to refer the case as 'Action dropped' as the boy is the custody of his mother. After obtaining permission, final report was submitted to X Metropolitan Magistrate, City Criminal Court, Secunderabad. …"

4. It is obvious from the above extract that the boy is beyond the jurisdiction of this Court. It is a different matter whether the boy was legally removed from the custody of the petitioner or not. The boy is beyond the jurisdiction of the respondent-Police officers also. The petitioner instead of initiating appropriate proceedings, if he is so advised for the violation of the orders of custody granted by the Family Court, Secunderabad, chose to come to this Court by way of the present writ petition.

5. It appears from the material on record that the alleged detenue is in the custody of his mother at Abu Dhabhi. Since the issue as to whether the custody of the detenu by his mother is in violation of the orders of the Family Court referred to earlier or not is not the question before this Court, we do not propose to examine the same. If the petitioner is so advised, it is open for him to initiate appropriate proceedings for violation (if any) of the orders of the custody passed by the Family Court.

6. With the aforementioned direction, the Writ Petition is accordingly disposed of. No costs.

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J.CHELAMESWAR,J

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November 08, 2006 **D.APPA RAO,J**

KVR/PGS